

REMARKS

Favorable reconsideration is respectfully requested in view of the foregoing amendments and the following remarks.

Initially, Applicants and their undersigned representative wish to express their sincere appreciation to the Examiners for their courtesy and helpful suggestions made during the personal interview.

The specification has been amended to delete the phrases "free from phosphate ester and phosphonate ester in molecular structure" and "provided that they/it are/is free from phosphate ester and phosphonate ester in molecular structure, and" from pages 2, 3 and 7 of the specification as per the Examiner's request.

Claim 21 has been cancelled without prejudice, and claims 22, 28 and 39 have been amended. The claim amendments have been presented to delete the phrase "free from phosphate ester and phosphonate ester in molecular structure" from the claims and to put the claims in better form. Support for the claim amendments is readily apparent from the teachings of the specification and the original claims.

With regard to the objection of the amendments dated April 5, 1999 and September 13, 1999 under 35 U.S.C. § 132 for introducing new matter, Applicants believe that this objection has been overcome by the amendments to the specification and the following remarks.

As stated earlier, the specification has been amended to delete the phrases "free from phosphate ester and phosphonate ester in molecular structure" and "provided that they/it are/is

free from phosphate ester and phosphonate ester in molecular structure, and” as per the Examiner’s request.

With regard to the new matter objection relating to “anticancer”, the Examiner and his supervisor have indicated during a telephone interview dated November 21, 2000, that in light of Applicants’ arguments of September 25, 2000, this new matter objection will be withdrawn.

As stated in Applicants’ response of September 25, 2000, under U.S. practice, matter not found in either the drawings or specification of an original application or involve a departure from or an addition to the original disclosure constitute new matter and therefore cannot be added to (or deleted from) the specification. Further, it is also important to note that new matter should be evaluated in light of the claims since new matter can only be subject matter which has been introduced into the disclosure to properly support the claimed subject matter.

The Preliminary Amendments filed on April 5, 1999 and September 13, 1999 deleted the contents relating to anticancer from the specification. This deletion does not involve a “departure from the original disclosure” since the original and current claims are directed to an apoptosis-inducing agent or food or beverage having apoptosis inducing activity. Please note that the claims directed to an anticancer agent have been cancelled without prejudice and thus, subject matter which support such claims are no longer necessary to the disclosure. As a result, the deleted subject matter relating to anticancer should not constitute new matter under U.S. practice.

Thus, in light of the amendments to the specification and foregoing remarks, Applicants respectfully submit that the new matter objection of the amendments under 35 U.S.C. 132 cannot be sustained and should be withdrawn.

With regard to the rejection of claims 1, 3-9 and 11-20 under 35 U.S.C § 112, first paragraph, this rejection have been overcome by the amendments to claims 22 and 28. Specifically, the phrase “glycerolipid and/or glyceroglycolipid being free from the phosphate ester and phosphonate ester in molecular structure” has been deleted from the claims. As a result, Applicants believe that this rejection can no longer be sustained and should be withdrawn.

With regard to the rejections of claim 1 under 35 USC § 102(b) as being anticipated by Nojima et al. or Yazawa et al, these rejections have been rendered moot by the cancellation of claim 21 which corresponds to claim 1.

With regard to the rejection of claims 1, 3-5, 7-8 and 17-18 under USC § 102(e) as being clearly anticipated by Winget (U.S.P. 5,767,095), this rejection has been overcome by the filing of the verified translation of the certified priority document, enclosed herewith. Applicants submit that since Applicants’ priority date of November 8, 1996 is prior to the filing date, January 7, 1997, of Winget, the Winget reference is no longer valid as a prior art reference. Thus, this rejection can no longer be sustained and should be withdrawn.

With regard to the rejection of claims 6, 11-16, and 19-20 under 35 USC § 103(a) as being unpatentable over both Winget and Yazawa et al. in view of Wright et al and Nelson, this rejection has also been overcome by the filing of the verified translation of the certified priority document.

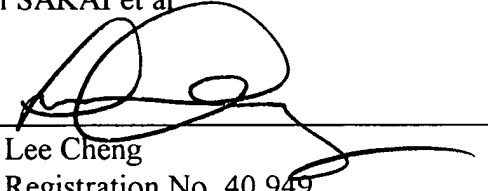
In view of the foregoing amendments and remarks, it is respectfully submitted that the Application is now in condition for allowance. Such action is thus respectfully solicited.

If, however, the Examiner has any suggestions for expediting allowance of the application or believes that direct communication with Applicant'(s)' attorney will advance the prosecution of this case, the Examiner is invited to contact the undersigned at the telephone number below.

Respectfully submitted,

Takeshi SAKAI et al

By: _____


Lee Cheng
Registration No. 40,949
Attorney for Applicants

LC/gtn
Washington, D.C.
Telephone (202) 721-8200
Facsimile (202) 721-8250
November 27, 2000